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In The

SUPREME COURT OF THE UNITED STATES

No. 72-1366

EDWARD NORWELL,
Appellant-Petitioner,

vs.

CITY OF CINCINNATI,
Appellee-Respondent.

MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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STATEMENT OF FACTS

On December 25, 1971, Cincinnati Police Patrolman Johnstone received a radio run to the 300 block of Stanley Avenue in Cincinnati, Hamilton County, Ohio. Officer Johnstone was dispatched to investigate a "suspicious man hanging around the pony keg". The "pony keg" is a package 'take-out' store which was closed at that time. The officer was aware that the pony keg at this location had been broken into on several previous occasions, and as he responded to the scene, he saw the Defendant-Appellant, Edward Norwell, walk away from the pony keg. The officer parked the police car, approached the Defendant-Appellant and asked him if he lived in the area. The Defendant-Appellant looked at the officer and proceeded

to turn and walk away. The officer attempted to stop him, at which time the Defendant-Appellant threw of the restraining arm of the officer, and said, "Let off of me. I don't have to tell you people anything."

The officer in full uniform, then further identified himself, and again the Defendant-Appellant turned and walked away. The Defendant-Appellant was once again restrained at which time he became so violent that a second officer, Patrolman Stonestreet, was called by the arresting officer to assist. When Officer Stonestreet arrived the Defendant-Appellant was creating a disturbance. The Defendant-Appellant was finally restrained, placed in the police car, and taken to Central Station. Defendant-Appellant was subsequently charged and convicted of violating Section 901-D4, Disorderly Conduct Ordinance, of the Cincinnati Municipal Code. Thereafter, on August 28, 1972, the Court of Appeals for the First District of Ohio affirmed the judgment. Subsequently, the Defendant-Appellant appealed to the Supreme Court of Ohio and the Memorandum in Support of Jurisdiction to said court was denied.

It is from this decision that Defendant-Appellant now submits to the Supreme Court of the United States a Petition for a Writ of Certiorari to the Supreme Court of Ohio.

WHY THERE IS NO SUBSTANTIAL CONSTITUTIONAL QUESTION HEREIN INVOLVED AND WHY THIS CASE IS NOT OF GREAT OR GENERAL PUBLIC INTEREST

THE UNITED STATES SUPREME COURT HAS DECIDED THE REQUISITE STANDARDS AS TO THE CONSTITUTIONAL VALIDITY OF THE DISORDERLY CONDUCT STATUTES AND THE FACTS AND ORDINANCE HEREIN COMPLY WITH THOSE REQUIREMENTS.

ARGUMENT

In June of 1972, this Court specifically decided and set forth definite standards regarding the constitutional validity of the disorderly conduct statutes. *Colten* v. *Kentucky*, 407 U.S. 104 (1972). Consequently, there is no basis for distinction as the factual complex of the instant case raises issues identical to those already decided by this Court in *Colten*.

The Cincinati Municipal Code Ordinance 901-D4 DISORDERLY CONDUCT, like that in *Colton*, fully complies with the due process and equal protection requirements as proscribed by the United States Constitution.[1] Precisely, this Court held that where the highest state court has limited the application of the disorderly conduct statute to instances where there is no protected right, then such statute is not impermissibly vague or broad.[2]

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[1] Defendant-Appellant, Edward Norwell was not exercising any constitutionally protected freedom and the police officer was engaged in the lawful performance of his duty.

[2] *Coates* v. *Cincinnati*, 402 U.S. 611 (1971); *Cohen* v. *California*, 403 U.S. 15 (1971); *Cox* v. *Louisiana*, 379 U.S. 536 (1965); and *Gooding* v. *Wilson*, 405 U.S. 518 (1972) are clearly distinguishable

Therefore, by definition, the instant ordinance contains the requisite guidelines for enforcement as specifically enunciated by this Court.[3]

The Ohio Supreme Court in *Cincinnati* v. *Hoffman,* 31 Ohio St. (2d) 163 (1972), construed the disorderly conduct ordinance as neither prohibiting the lawful exercise of any constitutional right, nor escaping the understanding of any person of "common intelligence" who desires to obey it. Moreover, there was no discriminatory or selective enforcement herein involved for Defendant-Appellant's activities do not fall within the class of any constitutionally protected freedom.[4]

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from *Colten* v. *Kentucky,* 407 U.S. 104 (1972) and *Cincinnati* v. *Hoffman,* 31 Ohio St. 2d 163, 285 N.E. 2d 714 (1972), cert. den. 93 S. Ct. 1370 (1973). In *Coates, Cohen* and *Gooding,* the statutes involved therein infringed upon the First and Fourteenth Amendments of the United States Constitution. Those State Courts did not narrowly construe the application of the respective statutes and therefore said statutes were found to be unconstitutional.

[3] The Ohio Supreme Court in *Cincinnati* v. *Hoffman,* 31 Ohio St. 2d 163, 285 N.E. 2d 714 (1972) cert. den. 93 S. Ct. 1370 (1973), applied the constitutional mandates enunciated in *Colton* v. *Kentucky,* 407 U.S. 104 (1972):

> "A crime is committed only where there is no bona fide intention to exercise a constitutional right — in which event, by definition, the statute infringes no protected speech or conduct — or where the interest so clearly outweighs the collective interest sought to be asserted that the latter mus be deemed insubsantial."

[4] The police officer in the case at bar knew that previous burglaries had occurred at the location in question. The officer received a police radio run to said location late in the evening and it was dark. The officer asked the Defendant-Appellant to explain his presence. The Defendant-Appellant refused to cooperate and became noisy and boistrous.

In light of the surrounding circumstances, the officer was acting within the scope of his authority and under the mandate proscribed in *Terry* v. *State of Ohio,* 392 U.S. 1, 88 S. Ct. (1968). The *Terry* case sets forth the circumstances under which a police officer may stop and inquire of a citizen.

The issues raised in the case now before this Court are identical to those issues raised in *Colton* v. *Kentucky*, 407 U.S. 104 (1972).[5] Consequently there is no constitutional question herein involved.[6]

CONCLUSION

There was no discriminatory or selective enforcement herein involved for Petitioner-Appellant's activities do not fall within the purview of any constitutionally protected freedom.

Wherefore, Respondent-Appellee for the reasons stated herein respectfully requests the Honorable Supreme Court of the United States to find in accordance with the Supreme Court of Ohio.

Respectfully submitted,

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[5] *Colton* was arrested for disorderly conduct when he failed to comply with a request given by a police officer in the performance of his duties. Likewise, in the instant case, Defendant-Appellant Norwell, failed to comply with several requests made by the police officer. The instant Defendant-Appellant also attempted to elude the police officer and subsequently became abusive and physically uncontrollable.

[6] Individuals may not be convicted under the Cincinnati Municipal Code, Disorderly Conduct Ordinance for the expression of any constitutionally protected freedom. *Cincinnati* v. *Hoffman*, 31 Ohio St. 2d 163 (1972) cert. den. 93 S. Ct. 1370 (1973).